

## Meeting Minutes

2017 Division 45 and 71 Rule Update: Fiscal Advisory Committee Meeting

March 28, 2017  
Oregon DEQ Salem Regional Office  
4026 Fairview Industrial Drive SE, Room 201  
Salem, OR 97302



State of Oregon  
Department of  
Environmental  
Quality

**WQ Permitting &  
Program Development  
Operations Division**

700 NE Multnomah  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-5850

Contact: W.Knight  
[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

*DEQ is a leader in  
restoring, maintaining and  
enhancing the quality of  
Oregon's air, land and  
water.*

### List of Attendees

- Susie Smith, Assn. of Clean Water Agencies, Executive Director
- Peggy Lynch, League of Women Voters, Natural Resources Coordinator
- Tracy Rutten, League of Oregon Cities, Intergovernmental Relations Associate
- Eric Strecker, Geosyntec Consultants, Principal Water Resources Engineer
- Josh Graves, A Affordable Royal Flush, Owner/Operator; Licensed Inspector/Installer
- Joel Klein, Econo Rooter Services, Inc., President
- Torrey Lindbo, City of Gresham, Water Sciences Program Manager
- Kat LaFever, City of Keizer, Sr. Environmental Technician (Attending as Public)
- William Knight, Oregon DEQ, Program Analyst (Facilitator)
- Ron Doughten, Oregon DEQ, WQ Permitting & Program Development Section Manager (Topic Expert and Consult to Committee)
- Jeffrey Navarro, Oregon DEQ, Sr. Policy Analyst (Observer, note taking assistance)

### List of Handouts and Presentation Notes

- ❖ Draft Fiscal Impact Statement: Water Quality Permitting Division 45 and 71 Rule Update
- ❖ Proposed updates to Oregon Administrative Rules, Division 45 (Redline)
- ❖ Proposed updates to Division 45 Tables 70A – 70I
- ❖ Proposed updates to Division 71 Tables 9A – 9F
- ❖ DEQ Travel Reimbursement Policy
- ❖ DEQ Travel Reimbursement Form
- ❖ Committee Roster

#### 3 p.m. Meeting Commencement

- 10 minute check-in with Onsite Specialist Randy Trox, DEQ
  - How does the surcharge work?
  - What is the history of the surcharge and recent history of onsite fees?
- Introductions

#### 3:20 p.m. Overview

- Committee role and purpose
- Rulemaking schedule

#### 3:25 p.m. Review of Materials Provided

- Review Division 45 rule text revisions
- Review Division 45 rule tables

- Review Onsite Septic fee tables
- Review recent changes to the Draft Fiscal Impact Statement

## Committee Discussion and Recommendations:

### 340-045-0033(11) - Removal of General Permits from Rule Text

Committee members requested clarity on the reason for removing the general permits from the regulations and the significance of a change from rule to order. DEQ agreed to include a response in the meeting minutes for committee review.

*Answers from DEQ's General Permit Coordinator Beth Moore:*

#### **Q: Why are some general permits named in these rules and others not?**

Before Senate Bill 45, ORS 468B.050(2) provided for adopting general permits by department order rather than the more resource intensive rulemaking process. All general permits were issued by rule.

DEQ incorporated this statute into OAR 340-045-0033 in 2005 and it allowed a general permit to be adopted by order as well as rule. The permits struck from Division 45 are the permits that were adopted by rule. After 2005 DEQ issued these permits by order.

In 2009, I managed the rule change project called "Streamlining Water Quality General Permit Adoption." Specifically, we added the following language to OAR 340-045-0033(1):

'A permit adopted by rule may be terminated by a later permit issued by order if the later permit covers the same activity and specifically provides for termination of the earlier permit.'

The public notice for the 2009 rulemaking called out this rule change:

'There are 22 NPDES and WPCF general permits adopted by rule in OAR 340-045 that cover discharges such as stormwater, wash water, suction dredges and seafood processing. Nine of the permits that are listed there will be removed from OAR 340-045 because they expired and were superseded by a new permit. The remaining permits may be superseded in the future with a permit adopted by department order.'

The permits proposed for removal from our Division 45 rules are expired and more importantly are superseded by more recent versions of these permits issued by order.

#### **Q: If they are named and "adopted by reference" in rule does this change how we issue or enforce these permits?**

There is typically no change in how a general permit is enforced when it is in rule. Adopting a permit by rule, or amending to alter or update conditions, is a lengthy process, so DEQ prefers to issue by order.

If a general permit adopted by rule is renewed by order, we add an explanation in the permit evaluation report and describe differences between the two permits. We do this when renewing a permit by order as well.

### 340-045-0035/0037(9) – Issuance of NPDES Permits: Removal of the 20 day waiting period

The proposed edits remove the 20 day waiting period for a permit to become effective after the director signs it. This 20-day waiting period represented the permittee's opportunity to request a formal hearing to challenge the permit prior to effective date.

Under the proposed edit to the rule, the permittee still has the right, within 20 days after the permit's issuance date, to request a hearing. The director indicates the issuance date on the permit. The proposed rule is silent on 'upon notification to applicant' to start the 20-day clock.

EPA noted in the most recent Permit Quality Review that DEQ's effective date on permits is unclear. Signature pages on NPDES list the date signed and "issued" but the permit is not currently effective until 20 days later.

**Recommendation 1:**

Committee members would like to see more description of DEQ's process and adjustments to this section. Committee recommended:

1. Add language to the rule caption that captures the procedure for an appealed, renewed permit that allows the applicant to operate and submit compliance data under the old permit until the hearing process is complete.
2. The committee would like more information on what DEQ intends with this change. It appears this change shifts the burden to the permittee to prove the permit is invalid and to participate closely in the permit development process so the potential to reach the point of appeal is lessened. The permittee would have to operate under the permit until the hearing process is resolved.
3. Same comments and recommendations should apply to the WPCF paragraph.

**Action 1:**

DEQ will explore the following options:

- Add two date lines to the permit document. One for date signed – 'issued' – and another for the permit's effective date.
- Add appeal procedure to rule caption. Identify which conditions are valid for appealed renewal permits.
- Articulate in the staff report for this rulemaking the steps in the permit development process where the permittee already has opportunity to review and comment on draft permits. A permit will likely reach appeal status only if there has been poor communication between permit writer and permittee during the drafting of the permit. Additionally, issues that permittees can't resolve or understand and would prompt appeal are assumed to be larger, legal issues that are outside the sphere of influence for DEQ's water quality permitting program.

## **340-045-0075 Fee Schedule**

### **Table 70C: Domestic vs. Industrial**

**Recommendation 2:**

Provide a better definition of 'Domestic' vs. 'Industrial' in the context of these rules. These terms aren't defined in rule but used in the text and in the tables to differentiate types of permits and the related services. These services have different costs so the definition is potentially important. Committee recommends providing clarity on what is meant by these terms.

**Action 2:**

It may not be necessary to add to the rule language. Determinations between 'domestic' and 'industrial' are happening consistently in the NPDES program. DEQ should reinforce permittee and DEQ staff understanding through education. These terms apply to types of permits and often their exact meaning is confused because these words are used as labels for sources or individual permittees. It's important to keep the definitions limited to the types of permits in this context.

"Domestic" permits are issued to sewage and wastewater treatment plants, as well as other systems designed to treat wastewater that is primarily composed of human sewage. The permittee could be industry or a municipality.

### **340-045-0075(7) Technical Activity Fees**

#### **Recommendation 3:**

Define 'environmental management plans' - this is a very broad term. Consensus from committee is to list the actual services – the specific activities and plans required for making a determination above what is covered by application and annual fees.

#### **Action 3:**

See discussion below. DEQ will better define this term and attempt to identify costs associated with reviewing specific plans.

### **Table 70F: Proposed Technical Activity Fee**

The absence of the word 'sewage' is problematic. The committee understands DEQ intent is to capture work done – in this case, reviewing and approving an updated biosolids or stormwater management plan NOT in conjunction with a permit modification. DEQ should implement cost recovery for these services that are in addition to services covered under application and annual fees.

#### **Recommendation 4:**

Do not remove the words 'sewage' and 'sewer system' from the table. While DEQ claims updated plan review is not consistently charged for or completely understood by permittees and DEQ staff, removing 'sewage' and 'sewer system' in an attempt to broadly apply review fees to review of updated management plans creates additional confusion because the activities could be interpreted to apply to stormwater permits or other permits where the activity is already covered by fees or part of an annual report review.

#### **Action 4:**

DEQ will not eliminate the words 'sewage' and 'sewer' from the table and will instead investigate further to determine if proposing fees based on actual work is feasible during this rulemaking. Other options DEQ will explore prior to the public comment period include:

- Update permit modification rules; Revisit the definitions and requirements/restrictions around 'modifying' plans for expired permits. When environmental management plans were first introduced DEQ's intent appears to have been to incorporate updates via permit modifications and during annual reporting.
- Determine comparable or actual work metrics to capture appropriate fee amount. Tiered to represent scale of work is ideal. Assign amounts to specific plans reviewed.
- Determine if General Permit 'Disposal system plan review' fee (if required at application) represents comparable amount for reviewing updated stormwater or biosolids management plan (until actual cost analysis can be performed).
  1. Charge this fee for only Individual Permits if plan updated mid-term (if not part of a permit Modification) and for General Permits if required at application, or;
  2. Extend the 'Disposal system plan review' fees so they are not limited to General Permits or only required at application. Charge any time a plan is updated and submitted for review (outside annual report and permit modification).

#### **Recommendation 5:**

Committee members also encouraged DEQ to ensure that review of environmental management plans is coordinated with ODFW in cases where both agencies have jurisdiction or require additional plans as part of permit requirements.

**Action 5:**

DEQ staff will continue to work closely with other agencies and seek to mitigate unreasonable or duplicative reporting burdens, particularly when developing reporting requirements for general permits. A good example of this practice is the current coordination between DEQ and the Dept. of Agriculture on Combined Animal Feeding Operations (CAFO) permits.

**Recommendation 6:**

Committee members agreed. In the future, DEQ needs to conduct a comprehensive analysis on the current fee structure. Enough time has transpired since the original rules and fee determinations.

**Action 6:**

This is an involved effort with cost and time associated is likely not feasible for this rulemaking. However, DEQ has identified this effort as a necessary project and the project is recommended by the recent third-party review of the program.

Currently, DEQ can compare projected costs against projected revenue to get a general picture of the program as a whole, but there is no way to determine, in most cases, if the individual fees are truly reflective of the actual work and cost involved to DEQ to provide specific services.

DEQ agreed to provide a comparison of fees between Washington Dept. of Ecology and DEQ to the committee. William Knight will put together a document with a fee comparison table, choose one or two other states and provide to the committee by April 15, 2017.

**340-045-0075 – Table 70H – Municipal Separate Storm Sewer System General Permits**

**Recommendation 7:**

Remove the “99,999” ceiling from the table. There won’t be anymore “Phase 1” communities to apply for an individual permit so hypothetically, a community above 99,999 population would have no fee assessed.

**Action 7:**

DEQ will make this change to the table and is grateful to committee member Tracy Rutten, League of Oregon Cities, for articulating this nuance in the rule.

**340-045-0075(2)(d) – Underground Injection Control Fee Table 70I**

DEQ proposed using the Modification fee listed for permit type “Db” – a low flow, discharging lagoon permit. Without a true field test the rule writer assumed discharge inspection similar to inspecting ‘discharge’ wells.

DEQ proposed an ‘eye-ball test’ to incorporate a missing fee for Major modifications to a UIC individual permit. In the absence of a true cost analysis, the proposed rule attempts to draw a comparison within the table of fees and attempts to relate comparable work to assign a fee.

The UIC individual permit uses the standard WPCF permit template so there is some justification that the amount of work involved to perform a Major modification is similar to a type of permit listed above the UIC permit in the table.

**Recommendation 8:**

An amount based on actual work and cost to DEQ is ideal. Committee member Torrey Lindbo with City of Gresham has extensive knowledge of the city’s stormwater and UIC permits. Lindbo indicated that the level of service DEQ must provide for a Major Modification of a UIC individual permit is closer to a non-discharging lagoon – so an amount similar to the “E” permit is warranted.

**Action 8:**

DEQ staff will interview the UIC program staff and inspectors and attempt to capture the work involved narratively in the absence of a more robust, metric driven analysis of actual cost. DEQ intends to do this type of analysis for all fees in the future and needs to list a fee to recover some cost.

If the situation occurs and a Major modification of a UIC permit is requested after establishing a fee in this rulemaking, DEQ does have authority to evaluate the work needed for the individual project and recover additional charges.

**Recommendation 9:**

Put all the UIC fees in one table. Update the UIC fee table and include the UIC Individual permit fees in 70I.

**Action 9:**

That is a fantastic idea and DEQ will make this change because it will improve communication of the rules. The audience for UIC permits is very specialized and the UIC portion of DEQ's website already promotes 'one-stop' education. The UIC program would reference a table in rule, rather than create an alternative that requires update.

### **340-071 – Onsite Updates to Fee Table**

DEQ has proposed a 3 percent fee increase for all onsite program fees except the surcharge adopted by rule. This is a departure from previous rulemakings to update NPDES and WPCF fees. Only Table 9D in the suite of Division 71 fee tables represents permit fees that fall under statute for annual increase not to exceed 3 percent. The fees in Table 9D cannot be raised above 3 percent and the remaining proposed fee increases will require submission to the Dept. of Administrative Services for approval.

Historically the Onsite program has requested fee increases to non-permit related service charges and activity fees in a separate rulemaking with no percentage increase ceiling. The program has requested a larger percentage increase after several fiscal cycles to keep pace with increasing operation costs and feedback from stakeholders has consistently indicated that smaller, more frequent increases would be easier for operators and septic installers to incorporate.

Committee member, Joel Klein, President of Econo Rooter Services, Inc. conducted an informal survey of operators and installers through his professional organization on the concept of increasing onsite program fees. Generally, respondents are opposed to a fee increase of any kind, however, a large majority recognize that the program needs to maintain adequate resources for enforcement. Many respondents share a common understanding that there is currently not enough capacity for consistent enforcement. Ideally, a fee increase would translate into more capacity to perform enforcement.

The committee discussed the Onsite fee tables and this led to a general discussion on scaling fees and performing true cost analysis.

**Recommendation 10:**

Explore options for establishing fees based on economic factors to protect operators in rural areas. Committee member Josh Graves, Owner of A Affordable Royal Flush and a Licensed Inspector and Installer noted that the fees take a higher percentage of revenue from rural operators and homeowners because of economy of scale. Salaries and available income tend to be lower in rural areas.

Adding to this concept, other committee members recommended exploring more tiered approaches to fees based on economic factors such as economic health indicators, population and geographic region.

**Action 10:**

DEQ has promoted this concept with certain fees – particularly fees applied to municipal and local government permittees. The current MS4 General Permit annual fees and Domestic NPDES and WPCF annual fees are scaled based on population and when initially proposed, DEQ had some concerns there would be resistance by larger communities paying more for similar work. The work involved isn't specifically driving the fee amount for individual communities, but rather being supported as a whole with larger communities contributing more to assist the smaller communities.

The Pretreatment annual fees are also scaled based on number of sources, which captures a type of economy of scale in that larger communities typically have more sources.

DEQ will look for opportunities to apply these types of methodology where appropriate in future analysis of DEQ's permitting fee structure. Key will be determining actual costs and identifying clearly the work involved and then applying layers to promote equity and better assist smaller communities and businesses.

**Recommendation 11:**

Committee member Josh Graves also recommended that DEQ keep the repair fees low and the other committee members supported examining this possibility. DEQ should consider no fee increase for Repair Fees and if revenue is needed apply the increase to another type of charge (like the Install fees) where it can be better absorbed. This would create less resistance to repairs and may promote compliance, particularly with small, rural systems.

**Action 11:**

DEQ staff person William Knight will carry this message and concept directly from the committee to Randy Trox with DEQ's Onsite program for consideration. The Onsite fees, except Table 9D, are not limited in increase percentage by statute. If needed Randy will contact the committee members representing Onsite Septics, Josh Graves and Joel Kline for additional information. William will communicate directly with the committee members when a decision is proposed.

**General Discussion and Recommendations About the Proposed Updates to Rule Text and Tables:**

**Recommendation 12:**

DEQ should articulate and show the relationship more clearly between the need to raise fees to support staff levels and future program directions.

**Action 12:**

Similar needs are identified in the recent independent report on improving DEQ's water quality permitting program. The program needs to perform a valid cost analysis on the services it provides and analyze and update the current fee structure. Additionally, the program needs to clearly articulate progress surrounding implementation of the recommendations included in the independent report. These projects are contained in the independent report and will be prioritized and implemented in the near future. DEQ will develop communications stemming from the need to report progress and keep permittees informed. Additionally, DEQ is likely to revisit permit fees and initiate similar rulemakings annually and this information when available can be incorporated into the Fiscal Impact Statement.

**Recommendation 13:**

Redirect the Onsite fees for enforcement back into the Onsite program.

**Action 13:**

Unfortunately DEQ cannot do this. Dedicating enforcement generated revenue into the state General Fund is common practice designed to prevent agencies and specific programs from pursuing enforcement to with the purpose of improving budgets and increasing available revenue.

**Recommendation 14:**

Support and promote the Craft 3 state revolving fund loan program designed to provide education and loan relief for failing septic systems.

**Action 14:**

DEQ wholeheartedly agrees and in September 2016 issued [a news release on the new program](#). DEQ staff person William Knight will carry this message from the committee directly to Onsite and State Revolving Loan program staff and encourage development of additional outreach designed specifically for operators, installers and homeowners about the loans.

**Discussion and Recommendations on the Draft Fiscal Impact Statement:**

**Section: Statement of Cost of Compliance**

**Recommendation 15:**

Add more to the impact on the public section (No. 4). Articulate that these increased costs are to cover basic services and must be recouped to maintain a viable permitting program. There is no profit incentive. This increase represents attempting to cover costs of services. Not raising fees represents a cost to permittees if technical support, enforcement, permit writing and other activities are slowed or cannot be provided.

**Action 15:**

DEQ will update this section and share all updates to the Fiscal Impact Statement with the committee prior to the Public Comment Period. Additionally, we will incorporate the base level funding and budget projections discussion into the DEQ section (No. 2) and better describe what happens if fees are not increased.

**Action Items**

- DEQ produce meeting minutes for committee review and approval.
- DEQ solicit additional comments, edits to meeting minutes until April 15.
- Committee members may share additional *informal* comments on proposed rules and the draft fiscal impact statement until start of public comment period in May/June.

**Meeting Adjournment Time:** 5 p.m.